

Testimony
Before the Subcommittee on Public Lands and Environmental Regulation
Committee on Natural Resources
United States House of Representatives

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HR _____ (Bishop)
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Mr Chairman and Distinguished Members of the Subcommittee:

I am Kitty Benzar, President of the Western Slope No-Fee Coalition, an organization that has been working since 2001 to restore the tradition of public lands that belong to the American people and are places where everyone has access and is welcome. I am speaking to you today on behalf of our supporters, on behalf of the organizations with whom we closely work, and on behalf of millions of our fellow citizens who believe as we do that while the Federal Lands Recreation Enhancement Act is not perfect and is not being properly implemented in many areas, the proposed bill would be a huge step backwards. It would return us to the days of “Fee Demo” when the Forest Service and BLM could charge the public simply to park their car and go hiking, riding, or boating in undeveloped areas without using any developed amenities.

For eighteen years, the “pay to play” approach to recreation has transformed our National Forests and BLM lands from places where everyone has a basic right to access into places where we can be prosecuted for not having a ticket of admission.

For eighteen years the federal land management agencies have viewed American citizens as customers rather than owners, and have increasingly managed basic access to outdoor recreation as an activity that must generate revenue, rather than as an essential service that promotes a healthy active population.

Congress gave the agencies Fee Demonstration authority in 1996 to test, as an experiment, unlimited fees and see what worked and what didn’t, what the public would accept and what they would not. With this encouragement, the agencies embarked upon a new paradigm in public lands management. For the first time, the Forest Service and BLM began requiring direct payment for admission to the National Forests and other public lands under their management. Simple things like a walk in the woods or paddling on a lake at sunset became a product that could be marketed and sold to paying customers.

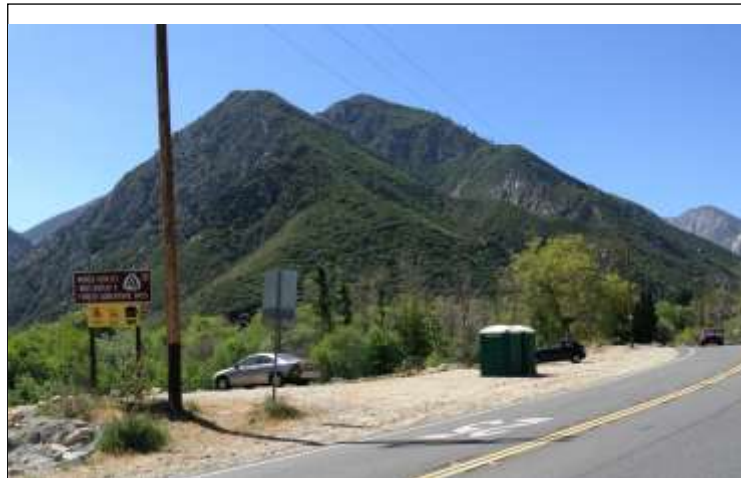
Opposition to Fee Demo was overwhelming and widespread. From New Hampshire to California, from Idaho to Arizona, Americans from all walks of life and all political persuasions raised their voices against a fee-based system for basic access to outdoor recreation. Resolutions of opposition were sent to Congress by the state legislatures of Idaho, Montana, Colorado, Oregon, California, and New Hampshire. Counties, cities, and organizations across the nation passed resolutions opposing the program. Civil disobedience

was widespread, and in response enforcement became heavy-handed. Criminal prosecutions of people who simply took a walk in the woods without buying a pass were disturbingly frequent.

Congress terminated the experiment in 2004 by enacting FLREA to set limits and scale back on fees based on what Fee Demo had shown. FLREA's limiting language, had it been honored by the agencies, could have achieved this and might have calmed much of the public's opposition. For example, FLREA prohibits fees:

"For persons who are driving through, walking through, boating through, horseback riding through, or hiking through Federal recreational lands and waters without using the facilities and services."

While the agencies made the appropriate changes in a few areas once FLREA was passed, in most places they carried on as if nothing had changed and recreation fees continued to spread to thousands of undeveloped and minimally developed areas. Americans are still being charged fees for such basic activities as: roadside parking, walking or riding on trails, access to vast tracts of undeveloped public land, and even for such fundamentals as the use of toilets. Even FLREA's straightforward requirement that a "permanent toilet" be provided before a Standard Amenity Fee can be charged has been interpreted to allow roadside porta-potties because then, according to the agency, they can charge a fee for access to all the undeveloped backcountry beyond the road. Rather than fix these problems of maladministration of FLREA, the proposed bill makes them worse by cementing them into the law.



Fees have been required at this roadside pullout on the Angeles National Forest since 1996. The porta-potties were added to meet FLREA's requirement for a "permanent toilet."

Recreation access fees are a new tax and they are a double tax. Americans already pay for management of their federal public lands through their income tax, but these fees are an additional tax, levied directly by the agencies and distributed without congressional oversight. For those who enjoy motorized recreation, or who hunt or fish, they are a triple tax, because after paying state license fees as well as federal income taxes, they often must also pay an access tax to enjoy recreation on their public lands.

It is also a regressive tax. It puts the burden of public land management on the backs of Americans who live adjacent to or surrounded by federal land. In rural counties in the West, where in many cases over 80% of the land is federally managed, public lands are an integral part of life. Citizens in these areas, who are often just scraping by financially, should not have to buy a pass just to get out of town.

This regressive tax falls most heavily on lower income and working Americans. Two separate studies conducted ten years apart and on opposite sides of the country reached the almost identical conclusion that fees have caused nearly half of low-income respondents, and a third of all respondents, to use their public lands less. This has been reflected in declining visitation across agencies and geographic areas. For example, the Forest Service's visitor use estimates have fallen from 214 million visits annually in 2001 to only 161 million in 2012.

Fee Demo and FLREA have been a financial failure as well. GAO reports have revealed hidden administrative costs, fees being collected far in excess of operating costs, and agencies being unable to provide accurate and complete accountability for their fee revenue. The backlog of deferred maintenance, which was the initial justification given for Fee Demo, has continued to grow instead of shrinking, and appropriated funding disappears into agency overhead instead of making it to the ground. Instead of increased recreational opportunities, sites have been closed and facilities removed if they are perceived by the managing agency as inadequate generators of revenue.



A fee trailhead in Utah. BLM defines foot travel beyond this point, into a primitive area, as a "specialized recreation use."

The powerful incentive embodied in fee retention has proved to be too much for the agencies to resist. They have used an undefined word here and an ambiguous sentence there to justify the implementation of policies that nullify the protections on public access that FLREA was supposed to provide. Contorted interpretations of FLREA's Standard Amenity Fee and Special Recreation Permit Fee authority have led to de facto entrance fees to hundreds of thousands of acres of undeveloped federal recreational lands.

The best way to curb these abuses and restore common sense to fee policy would be to end the authority for fee retention

and return fees to the Treasury for appropriation and oversight by Congress. As long as they get to keep all the money they can raise, the agencies will inevitably seek to find and exploit every weakness they can in the wording of any limiting law.

But if Congress decides that fee retention is to continue, then it is imperative that the restrictions and prohibitions on where, and for what, fees can be charged must be spelled out very clearly, and there must be a procedure for citizens to challenge fees that do not appear to comply with the law.

I applaud the Chairman and this Subcommittee for acting to reform federal fee policy. However I regret to say that the draft language under discussion today would make the situation far worse. It does not provide sufficient safeguards to counterbalance the powerful incentive of fee retention and protect the public's right to basic access as expressed in FLREA. Instead, it provides strong new incentives to develop more facilities in more

places—facilities the public neither needs nor wants—simply in order to be able to charge fees.

Fees for use of developed facilities such as campgrounds are reasonable and have been well accepted, and we support them. But that should not be allowed to evolve into a situation where the agencies have an incentive to add facilities, not because the public needs or wants them, but because they want to be able to charge fees. A careful reading of this bill, in the context of the agencies' past actions, shows that they would charge a fee anyplace that there is any sort of toilet in the vicinity—even a porta-potty. The amenities threshold of where fees could be charged would be reduced to nearly zero. This bill would be a throwback to the anything-goes authority already proven to be a failure under Fee Demo. “Pay to play” would become “pay-to-pee.”

The concept of shared ownership, shared access, and shared responsibility, which should be based on a long accepted tradition that on federal lands facilities will be basic, would be lost under this draft bill. Federal facilities should remain basic specifically so that we can afford to make them available to everyone.

When I testified before you in June last year, I provided numerous examples of how the Forest Service and BLM have evaded the restrictions on fees that are in the current statute. They have amply demonstrated their ability to use any small ambiguity or conflicting language to go far beyond congressional intent as expressed in the law. Unfortunately, this draft bill contains many ambiguities, inconsistencies, and internal conflicts, which the agencies would certainly exploit to do more of the same.

Fee authority as currently being implemented has taken ownership of these lands out of the hands of the public and given it to the land management agencies. This is a change in relationship that is most disturbing. The draft under consideration would exacerbate instead of correcting it. It is time for the public, acting through our elected federal officials, to re-assert ownership of our public lands from these agencies that have forgotten that *it's not their land!*

New legislation should ensure that:

- fees are focused on use of developed or specialized facilities for which there is a demonstrated need; in particular, any fee areas should, at a bare minimum, require “permanent” toilet facilities, not just porta-potties as the proposed bill would allow;
- entrance fees are limited to National Parks and Wildlife Refuges;
- concessionaire fees are governed by the same requirements as agency fees;
- fees for special uses are carefully defined and never applied to private, non-commercial use of undeveloped or minimally developed areas;
- no incentive is given to the agencies that would encourage them to install facilities for the purpose of creating additional fee sites and revenues;
- ironclad agency financial accountability is established.

FLREA was Congress's attempt to replace Fee Demo with legislation that would provide the agencies with appropriate, albeit limited, fee authority. Ten years after the passage of FLREA we can now see what its weaknesses are and where opportunities for improvement lie.

Appended at the end of this testimony is suggested alternative language for your consideration. It represents our best attempt to ensure that the agencies are granted

reasonable and well-defined fee authority, while protecting the public lands from costly unneeded development and protecting the recreating public from an onslaught of new and ever-higher fees. I believe that this draft, based on a more than decade's worth of input from a wide cross-section of recreational visitors to federal lands, more nearly meets the requirements listed above than the bill under discussion. It would close the loopholes in FLREA that the agencies have been able to exploit, and create an equitable recreation fee program that would enjoy wide public support. I urge you to consider it.

Mr. Chairman and members of the Subcommittee, thank you for your consideration and for allowing me to testify before you today.

Respectfully submitted April 4, 2014

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<alternative discussion draft language attached>